

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF REVENUE**

IN THE MATTER OF:)
) OAH No. 13-0002-CSS
C C. D) CSSD No. 001127743
_____)

DECISION AND ORDER

I. Introduction

The obligor, C C. D, appealed a Modified Administrative Child Support and Medical Support Order that the Child Support Services Division (CSSD) issued in his case on December 3, 2012. The child in this appeal is B, 9. The other party to the case is B A. X.

The hearing was held on January 22, 2013. Mr. D did not appear; Ms. X attended the hearing in person. Erinn Brian, Child Support Specialist, represented CSSD. The hearing was recorded.

Based on the record and after careful consideration, Mr. D's child support is modified to \$549 per month for one child, effective December 1, 2012, and ongoing. This figure is the revised support amount CSSD calculated from the actual income information he provided after the modification order was issued.

II. Facts

Mr. D's child support obligation for B was set at \$398 per month in 2009.¹ On October 29, 2012, Mr. D requested a modification review.² On November 2, 2012, CSSD issued a Notice of Petition for Modification of Administrative Support Order to the parties.³ On December 3, 2012, CSSD issued a Modified Administrative Child Support and Medical Support Order that set Mr. D's modified ongoing child support at \$698 per month, effective December 1, 2012.⁴ Mr. D filed an appeal on December 18, 2012, and submitted a paystub as evidence of his income.⁵ Prior to the hearing, CSSD filed an extract of Mr. D's wage information that his

¹ Exh. 1.
² Exh. 2.
³ Exh. 3.
⁴ Exh. 4.
⁵ Exhs. 5 & 6.

employer provided to the Alaska Department of Labor and Workforce Development.⁶ CSSD also prepared a revised calculation of \$549 per month, based on the income information Mr. D provided.⁷

On January 3, 2013, the Office of Administrative Hearings (OAH) sent both parties a notice of the date and time for the hearing by certified mail to each one's last-known address. Mr. D's notice was returned and marked "unclaimed." At the beginning of the hearing, calls were placed to Mr. D's two telephone numbers of record. The first call went unanswered. A voicemail message was left for him to call the Office of Administrative Hearings (OAH). The second number appeared to be his workplace, but he was not there at the time and a message was not left for him. As of this writing, Mr. D has not returned the telephone message, nor did he appear for the hearing. Because Mr. D's notice was sent to his last-known address, service of the notice was found to be effective and the hearing was conducted without his participation.⁸

III. Discussion

Mr. D filed an appeal and requested a formal hearing, but he failed to appear for the hearing. Therefore, this decision is issued under the authority of 15 AAC 05.030(j), which authorizes the entry of a child support decision if the requesting party fails to appear. Child support orders may be modified upon a showing of "good cause and material change in circumstances."⁹ If the newly calculated child support amount is more than a 15% change from the previous order, Civil Rule 90.3(h) assumes "material change in circumstances" has been established and the order may be modified. Mr. D's child support has been \$398 per month since 2009. A child support calculation of \$457.70 or more would be sufficient to warrant modification in his case.¹⁰

A modification is effective beginning the first of the month after the parties are served with notice that a modification has been requested.¹¹ CSSD issued the notice in Mr. D's case on November 2, 2012, so a modification would be effective as of December 1, 2012.¹²

⁶ Exh. 7.

⁷ Exh. 8.

⁸ "If the department mails a document by registered or certified mail, service is effective if the mailing is addressed to the latest address provided to the department." 15 AAC 05.010(c).

⁹ AS 25.27.190(e).

¹⁰ $\$398 \times 115\% = \457.70 .

¹¹ 15 AAC 125.321(d).

¹² Exh. 3.

Mr. D provided his income information after CSSD issued the Modified Administrative Child Support and Medical Support Order, but he did not appear at the hearing to present testimony or provide any other evidence regarding his appeal. CSSD used the paystub dated December 28, 2012 that Mr. D provided to calculate a revised child support amount. Specifically, Mr. D had reported earnings of \$41,187.33 as of that date.¹³ With the addition of the PFD of \$878, this equals total estimated annual income of \$42,065.33.¹⁴ Inserting this income figure into CSSD's online calculator¹⁵ yields a child support amount of \$549 per month for one child.¹⁶ This is a correct calculation of Mr. D's child support obligation under Civil Rule 90.3.¹⁷

IV. Conclusion

CSSD revised its calculation of Mr. D's child support obligation to \$549 per month, based on income information he provided. Mr. D did not appear at the hearing, but given that his actual income results in a different support amount than entered in the modification order, Mr. D has met his burden of proving by a preponderance of the evidence that CSSD's Modified Administrative Child Support and Medical Support Order was incorrect, as required by 15 AAC 05.030(h). Therefore, CSSD's revised calculation should be adopted, effective December 1, 2012. There was no variation requested or granted under Civil Rule 90.3(c).

V. Child Support Order

- Mr. D's child support obligation for B is modified to \$549 per month, effective December 1, 2012, and ongoing;
- All other provisions of the Modified Administrative Child Support and Medical Support Order dated December 3, 2012 remain in full force and effect.

DATED this 21st day of February, 2013.

Signed

Kay L. Howard
Administrative Law Judge

¹³ Exh. 6 at pg. 1.

¹⁴ Exh. 8.

¹⁵ <http://www.childsupport.alaska.gov>

¹⁶ Exh. 8.

¹⁷ It should be noted that Mr. D provided evidence that he pays support for a prior child in the amount of \$108 per month,¹⁷ which CSSD incorporated into the calculation for Ariana pursuant to Civil Rule 90.3(a)(1)(C).

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor's income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 1st day of April, 2013.

By: Signed
Signature
Angela M. Rodell
Name
Deputy Commissioner
Title

[This document has been modified to conform to the technical standards for publication.]